

MARC STEVEN APPLBAUM, ESQ. SBN# 222511
MIDWAY LAW FIRM APC
4275 Executive Square, Suite 200
La Jolla, CA 92037
760-484-1203
marc@midwaylawfirm.com

Attorneys for Plaintiffs,
JEREMIAH GOBERT AND DESIRAE HAYES

DISTRICT COURT OF THE UNITED STATES OF AMERICA
CENTRAL DISTRICT OF CALIFORNIA

JEREMIAH GOBERT AND DESIRAE HAYES

Plaintiffs,

vs.

ALL WAYS TRANSPORTATION, INC., DBA
UNITED TRANSPORTATION MOVING AND
STORAGE, EYAL BEN-ORAR, DOES 1
through 50, inclusive,

Defendant(s).

Case No.:

COMPLAINT FOR:

1. BREACH OF CARMACK
AMENDMENT
2. NEGLIGENT MISREPRESENTATION
3. FRAUD
4. BREACH OF CONTRACT
5. NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS

JURY TRIAL DEMANDED

Plaintiffs, JEREMIAH GOBERT AND DESIRAE HAYES allege as follows:

PARTIES

1. Plaintiff, JEREMIAH GOBERT (herein after "PLAINTIFF" collectively with DESIRAE HAYES), is and at all times relevant to the facts herein, are individuals currently residing in real property located in Pahoehoe, Hawaii.

2. Plaintiff, DESIRAE HAYES (herein after "PLAINTIFFS" collectively with JEREMIAH GOBERT), is and at all times relevant to the facts herein, an individual currently residing in real property located in Pahoehoe, Hawaii.

1 482 U.S. 386, 392, 107 S. Ct. 2425, 96 L.Ed.2d 318 (1987). Plaintiff has properly pleaded a federal
2 question alleging Defendant has violated 49 U.S.C. §14706, the Carmack Amendment.

3 8. Venue is proper in this district pursuant to 49 United States Code §14706(d)(1),
4 because Defendants reside and/or conduct business in the Central District of California and because
5 certain of the transactions, acts, practices and courses of conduct constituting violations of the
6 Carmack Amendment and other causes of action occurred within this district.

7 **STATEMENT OF FACTS**

8 9. On or about December 19, 2022 Plaintiffs decided to relocate their primary place of
9 residence from Montana to Hawaii. To help make their trans-pacific move as simple and smooth as
10 possible, Plaintiffs sought to hire a professional, licensed and bonded moving company to transport
11 their household furnishings from their home in Montana to their new residence in Pahoehoe, Hawaii.

12 10. On December 19, 2022, Plaintiffs contacted Defendants and agreed to a contract
13 where by Defendant promised to transport Plaintiffs' belongings to Hawaii after collecting a
14 \$1800.00 good faith deposit that was paid by credit card. Plaintiffs agreed to pay Defendants an
15 additional \$5000.00 on January 4, 2023 and entrusted the entirety of their household items and
16 personal possessions including, but not limited to, three legally owned and registered guns.

17 11. In accordance with the contractual terms negotiated by Defendants agent, Plaintiff's
18 items were picked up at a single family residence located at 191 Lakeview Lane, Lakeside, Montana
19 59922 on January 4, 2023 as reflected in Job # W287784 where Plaintiff paid \$5000.00 to Daniel
20 DelaRosa, a driver for the Defendants with the balance when the possessions were delivered to
21 Hawaii.

22 12. On January 4, 2023, Defendant arrived at Plaintiffs' residence and collected a
23 deposit that was to include additional insurance coverage than the basis coverage..

24 13. Shortly after Defendants left with their household goods, Plaintiffs' called
25 Defendant's dispatcher by telephone on or about February 22, 2023 and requested that their goods
26 be returned to the above address in Montana as opposed to being shipped to Hawaii. Defendant
27 agreed to return the household goods to Montana without delay or additional costs.

1 14. On March 30, 2023, Plaintiffs' through counsel contacted Defendant because they
2 had not been contacted by Defendants as to the status of their household goods and on that basis
3 Plaintiff's counsel sent a demand letter that included a deadline of April 4, 2023 that was ignored by
4 Defendants. (A true copy is attached and incorporated as Exhibit A.

5 15. At no times material, has the defendants provided Plaintiffs that its possessions had
6 been delivered to Hawaii.

7 16. On April 6, 2023, Defendant sent Plaintiffs (and its counsel) an email that claimed
8 Plaintiffs had executed a "release form" to move any firearms, jewelry, and high value items
9 notwithstanding that no such release had been executed by Plaintiffs.

10 17. On April 6, 2023, counsel for Plaintiff requested a copy via email of all executed
11 service agreements and insurance riders from Defendants that has also been ignored.

12 18. On April 11, 2023, Alex Woodman, Dispatcher/Manager sent an email that Plaintiffs
13 possessions were in Montana and ready to be delivered to a residence in Montana.

14 19. On April 18, 2023, Defendant sent Plaintiffs an email that they were going to auction
15 Plaintiffs possessions to satisfy an unkown and arbitrary lien amount.

16 20. On April 18, 2023, counsel for Plaintiff sent an email to Defendants that they would
17 be liable both civilly and criminally if they auctioned Plaintiffs possessions without due process of
18 law.

19 21. At no time has the Defendants, returned Plaintiffs possessions that are valued in
20 excess of \$75,000.00.

21 Wherefore, PLAINTIFFS prays for relief as set forth fully below.

22 **FIRST CAUSE OF ACTION**

23 **BREACH OF THE CARMACK AMENDMENT**

24 (Against ALL Defendants)

25 22. Plaintiff hereby incorporates, by this reference, paragraphs 1 through 14, as though
26 fully set forth herein.

27 23. Defendant, by and through their actions of losing Plaintiffs' property during an
28 interstate move from Montana to Hawaii, have violated the Carmack Amendment. Congress created

1 the Carmack Amendment to create uniformity and to occupy the field of interstate transportation to
 2 avoid the confusion of conflicting state law. *Adams Express Co. v. Croninger*, 226 U.S. 491, 505
 3 (1913).

4 24. “The Carmack Amendment subjects a motor carrier transporting cargo in interstate
 5 commerce to absolute liability for “actual loss or injury to property.”” *Hughes Aircraft Co. v.*
 6 *North American Van Lines, Inc.*, 970 F.2d 609, 611 (1992) citing *Missouri Pacific R.R. Co. v.*
 7 *Elmore & Stahl*, 377 U.S. 134, 137 84 S. Ct. 1142, 1144, 12 L.Ed.2s 194 (1964).

8 25. “The Carmack Amendment subjects a motor carrier transporting cargo in interstate
 9 commerce to absolute liability for actual loss or injury to property.” *Hughes Aircraft Co.*, 970 F.2d
 10 at 611. Plaintiff alleges Defendant is directly responsible for completely losing 56 out of 412 boxes
 11 containing her personal belongings. Additionally, Plaintiff alleges Defendant has lost all of
 12 Plaintiff’s belongings which Defendant was responsible for adequately packing and transporting
 13 from Montana to Hawaii.

14 26. Throughout the entirety of the process, Defendant has been vague in their
 15 explanations, or gave unjustified explanations and excuses. The complete unprofessionalism of the
 16 Defendant has lead to Plaintiffs being left without the entirety of their household goods.

17 Wherefore, PLAINTIFFS prays for relief as set forth fully below

18 SECOND CAUSE OF ACTION

19 NEGLIGENT MISREPRESENTATION

20 (Against ALL Defendants)

21 27. Plaintiff hereby incorporates, by this reference, paragraphs 1 through 25 as though
 22 fully set forth herein.

23 28. Throughout the entirety of Plaintiffs’ contact with Defendant, Defendant has been
 24 entirely untruthful regarding the whereabouts of their items and the efforts taken to procure her
 25 missing items.

26 29. Negligent misrepresentation is a form of deceit, the elements of which consist of (1) a
 27 misrepresentation of a past or existing material fact, (2) without reasonable grounds for believing it
 28 to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) ignorance of

1 the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed,
2 and (5) damages. *Fox v Pollack*, 181 Cal.App.3d 954, 962 (1986).

3 30. Plaintiff now sues Defendants for their negligent misrepresentation as alleged.
4 Defendants made material misrepresentations on numerous occasions. First, Defendant indicated
5 to Plaintiffs' their belongings would be immediately returned to their residence in Montana.

6 **THIRD CAUSE OF ACTION**

7 **FRAUD**

8 (Against ALL Defendants)

9 31. Plaintiff hereby incorporates, by this reference, paragraphs 1 through 23 as though
10 fully incorporated herein.

11 32. Generally, "a breach of a fiduciary duty usually constitutes constructive fraud."
12 *Salahutdin v. Valley of California, Inc.*, 24 Cal.App.4th 555, 563 (1994). "As a general principle
13 constructive fraud comprises any act, omission or concealment involving a breach of legal or
14 equitable duty, trust or confidence which results in damage to another even though the conduct is not
15 otherwise fraudulent." *Id.* at 562. "A careless misstatement may constitute constructive fraud even
16 though there is no fraudulent intent." *Id.*

17 33. Plaintiff alleges Defendant purposefully, fraudulently, carelessly and intentionally
18 deceived Plaintiff and made many careless misstatements on numerous occasions.

19 34. Defendant's actions were intentional, oppressive, fraudulent and malicious in
20 conscious disregard of Plaintiffs' rights, thereby, justifying the award of punitive damages in an
21 amount to proven at trial.

22 35. Plaintiffs delivered an Evidence Preservation Letter based on the threats made by
23 Defendants to destroy, lose or auction its personal property. (A true copy is attached as Exhibit B)

24 Wherefore, PLAINTIFFS prays for relief as set forth fully below

25 **FOURTH CAUSE OF ACTION**

26 **BREACH OF CONTRACT**

27 (Against ALL Defendants)

28 36. Plaintiff hereby incorporates, by this reference, paragraphs 1 through 27 as though

1 fully set forth herein.

2 37. Plaintiff entered into a valid written contract with Defendant. The contract consisted
3 of Defendant packing and transporting Plaintiffs' belongings from Montana to Hawaii in exchange
4 for approximately \$6800.00.

5 38. Generally, to state a claim for breach of contract Plaintiff must prove (1) "the
6 existence of a contract; (2) [Plaintiff] has performed or performance was excused; (3) defendant's
7 breach of the contract; and (4) damages resulting from the breach." *Greenwich Ins. Co. v. Rodgers*,
8 729 F.Supp.2d 1158 (2010) citing *Troyk v. Farmers Group, Inc.*, 171 Cal.App.4th 1305, 1352, 90
9 Cal.Rptr. 3d 589 (2009).

10 39. Plaintiffs have suffered and will continue to suffer reasonable and foreseeable
11 consequential damages resulting from such breach including costs associated with replacing the items
12 that have not yet been delivered or returned.

13 40. Plaintiffs have been damaged by Defendant's material breach of contract in an
14 amount to be proven at trial.

15 Wherefore, PLAINTIFFS prays for relief as set forth fully below

16 **FIFTH CAUSE OF ACTION**

17 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

18 (Against ALL Defendants)

19 41. Plaintiff hereby incorporates, by this reference, paragraphs 1- 32 as though fully set
20 forth herein.

21 42. Plaintiff alleges Defendant negligently inflicted emotional distress upon them;. "The
22 injury we contemplate when considering negligent infliction of emotional distress is mental or
23 emotional injury." *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532, 544 (1994).

24 43. Plaintiff demands an award of damages for all distress suffered in an amount to be
25 determined at trial.

26 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 27 1. For an injunction ordering Defendant to return Plaintiffs property.
28 2. For compensatory, special, general and punitive damages against all Defendants.

1 3. For civil penalties pursuant to statute, restitution, injunctive relief and reasonable attorney
2 fees.

3 4. For reasonable costs of suit and such other and further relief as the Court deems proper.
4

5 Dated: April 16, 2022

Respectfully submitted,

6 MARC STEVEN APPLBAUM, ESQ.
7 MIDWAY LAW FIRM APC

8
9 By: /s/ Marc Steven Applbaum, Esq.
10 MARC STEVEN APPLBAUM, ESQ.
11 Attorney for Plaintiffs
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Midway Law Firm APC
ATTORNEYS AT LAW
4275 Executive Square, Suite 200 La Jolla, Ca 92037

Lawyer
Marc Steven Applbaum

March 30, 2023

Sent via Email and USPS

All Ways Transportation, Inc. (3185764)
DBA United Transportation Moving & Storage
ATTENTION: Eyal Ben-Oror, CEO, Secretary and Chief Financial Officer
19328 Londelius Street
Northridge, CA 91324

6200 De Soto Avenue #36314
Woodland Hills, CA 91367

Re: Jeremiah Gobert and Desirae Hayes (Our Clients)
Job No: W287784

Mr. Ben-Orar:

I am an attorney that represents Jeremiah Gobert and Desirae Hayes.

On December 19, 2022, my clients engaged your moving company to transport their possessions from Montana on January 4, 2023 to Hawaii and shortly after your company picked up their possessions you were instructed and agreed that you would return their family possessions back to Montana without delay.

Since January, 2023 my client's phone calls, emails and texts have been ignored and they have been without their family possessions causing severe emotional and financial distress.

Please be advised that included in possessions that are now under your control and custody are three guns legally owned and registered to my clients that requires your immediate attention as we will be filing a formal complaint with the ATF Field Office in Glendale, CA and the California Attorney General, Consumer Affairs Division and the Bureau of Household Goods and Services if our client's possessions are not safely and professionally delivered to 1115 3rd Avenue, Northwest, Great Falls, Montana on or before Monday, April 3, 2023. On that basis, I am demanding that you confirm the current whereabouts of my client's possessions so that I can contact ATF's Stolen Firearm Program Manager confirming that my client's three weapons are not lost or stolen within 48 hours as required by federal and state law.

My client is initially demanding the return of their possessions in the same condition as when they were picked up, pay their his legal fees as a result of your unprofessional services and delay tactics as well as immediately providing us with a copy of the insurance policy from emovinginsurance.com purchased from your agent.

If my demand is ignored, I have been instructed to file a lawsuit in the Central District of California on Monday, April 3, 2023 that will seek damages no less than \$75,000.00 alleging violations of the Interstate Carmack Amendment, Negligent Representation, Fraud, Breach of Contract, Negligent and Intentional Infliction of Emotional Distress and Unfair and Deceptive Business Practices. Under the Carmack Amendment you are 100% liable for all loss or injury to property moved by you in interstate commerce.

Please contact me at 760 484-1203 if you have any questions.

A handwritten signature in black ink, appearing to read 'Marc Appelbaum', with a long, sweeping horizontal line extending to the right.

Marc Steven Appelbaum, Esq.
MIDWAY LAW FIRM APC

cc:

Jeremiah Gobert and Desirae Hayes

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Midway Law Firm APC

ATTORNEYS AT LAW

4275 Executive Square, Suite 200 La Jolla, Ca 92037

Lawyers

Marc Steven Applbaum

760-484-1203

April 18, 2023

Sent Via Email and First Class Mail

All Ways Transportation, Inc. (3185764)

DBA United Transportation Moving & Storage

ATTENTION: Eyal Ben-Oror, CEO, Secretary and Chief Financial Officer

19328 Londelius Street

Northridge, CA 91324

Re: Evidence Preservation Letter

To Whom It May Concern:

Please be informed that this letter is in connection with an incident that occurred in connection with Job # W287784.

This letter will serve as a FORMAL DEMAND THAT YOU PRESERVE ANY AND ALL EVIDENCE, including, but not limited to, all possessions picked up by your company on January 4, 2023 at 91 Lakeview Lane, Lakeside, Montana 59922. ("Subject Location") RELATING TO the incident alleged in the Civil Complaint filed in the Central District Court in GOBERT v. ALL WAYS TRANSPORTATION, INC., DBA UNITED TRANSPORTATION MOVING AND STORAGE, EYAL BEN-ORAR.

DEMAND is hereby made for your company to maintain AND preserve any and all ORIGINALS AND COPIES OF videos (including security and surveillance videos) and photographs of the inside, OUTSIDE, AND ENTRANCE ways of the subject location, for the 24-hour period before and after THE ABOVE-DESCRIBED INCIDENT. ADDITIONALLY PLEASE IMMEDIATELY FORWARD COPIES OF THESE VIDEOS AND PHOTOGRAPHS TO MY ATTENTION.

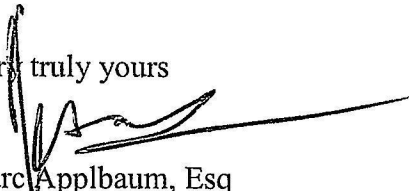
Kindly note that it is imperative that you take affirmative steps to preserve any item(s) related to the above-referenced incident/claim. The failure to do so may constitute negligent or intentional spoliation of evidence and which can result in the imposition of sanctions in any lawsuit or action, including an order barring the introduction of any such evidence.

Lastly, please immediately contact our office with the contact information for your applicable liability insurance carrier. In the meantime, please notify your insurance company of this incident, if you have not already done so. Please have a representative of your insurance company contact me as soon as possible but no later than ten days from the date of this letter. This will eliminate the need for us to contact you further.

Thank you for your professional courtesy and cooperation as well as your attention to this matter.

Please contact the undersigned upon receipt of this letter to discuss the matter.

Very truly yours



Marc Applbaum, Esq
Midway Law Firm APC

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct and that this Verification was executed in San Diego County, California.

/s/ Marc Steven Applbaum
Marc Steven Applbaum, Esq.